

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1177
92ND GENERAL ASSEMBLY

Reported from the Committee on Commerce and the Environment, February 23, 2004, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

4155S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 393.705, 393.710, 393.715, 393.720, 393.725, 393.730, 393.740, 393.745, 393.760, and 393.770, RSMo, and to enact in lieu thereof ten new sections relating to joint municipal utility commissions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 393.705, 393.710, 393.715, 393.720, 393.725, 393.730, 393.740, 393.745, 393.760, and 393.770, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 393.705, 393.710, 393.715, 393.720, 393.725, 393.730, 393.740, 393.745, 393.760, and 393.770, to read as follows:

393.705. As used in sections 393.700 to 393.770, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(1) "Bond" or "bonds", any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to sections 393.700 to 393.770;

(2) "Commission", any joint municipal utility commission established by a joint contract pursuant to sections 393.700 to 393.770;

(3) "Contracting municipality", each municipality which is a party to a joint contract establishing a commission pursuant to sections 393.700 to 393.770, a water supply district formed pursuant to the provisions of chapter 247, RSMo, or a sewer district formed pursuant to the provisions of chapter 204, RSMo, or chapter 249, RSMo;

(4) "Joint contract", the contract entered into among or by and between two or more of the following contracting entities for the purpose of establishing a commission:

- (a) Municipalities;
- (b) Public water supply districts;
- (c) Sewer districts;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(d) Nonprofit water companies; or

(e) Nonprofit sewer companies;

(5) **"Participating municipality", a municipality, public water supply district, or sewer district acting in concert with a commission in the development of a project but providing separate financing to acquire an individual interest in such project;**

(6) "Person", a natural person, cooperative or private corporation, association, firm, partnership, or business trust of any nature whatsoever, organized and existing pursuant to the laws of any state or of the United States and any municipality or other municipal corporation, governmental unit, or public corporation created under the laws of this state or the United States, and any person, board, or other body declared by the laws of any state or the United States to be a department, agency or instrumentality thereof;

[(6)] (7) "Project", the purchasing, construction, extending or improving of any **utility facility or property including, without limitation,** revenue-producing water, sewage, gas or electric light works, heating or power plants, **transmission and distribution systems, and all other types of utilities and revenue-producing facilities as deemed appropriate by the governing bodies of the contracting or participating municipalities,** including all real and personal property of any nature whatsoever to be used in connection therewith, together with all parts thereof and appurtenances thereto, [used or useful in the generation, production, transmission, distribution excluding retail sales, purchase, sale, exchange, transport and treatment of sewage or interchange of water, sewage, electric power and energy,] or any interest therein or right to capacity thereof and the acquisition of fuel of any kind for any such purposes.

393.710. 1. Municipalities, public water supply districts, and sewer districts may, by joint contract, establish a [separate] governmental entity to be known as a joint municipal utility commission, to effect the joint development of [water, sewer, gas, or electric light works, heating and power plants, or production, distribution and transmission of electric power and energy] **a project or projects** in whole or in part for the benefit of the inhabitants of such municipalities, **public water supply districts and sewer districts.**

2. Any joint contract establishing a commission under this section shall specify:

(1) The name and purpose of the commission and the functions or services to be provided by the commission;

(2) The establishment and organization of a governing body of a commission which shall be a board of directors in which all powers of the commission are vested. The joint contract may provide for the creation by the board of an executive committee of the board to which the powers and duties **of the board** may be delegated as the board **or Missouri statutes** shall specify;

(3) The number of directors, the manner of their appointment, terms of office and

compensation, if any, and the procedure for filling vacancies on the board. Each contracting municipality, public water supply district, and sewer district shall have the power to appoint one member and an alternate to the board of directors and shall be entitled to remove that member and alternate at will;

(4) The manner of selection of the officers of the commission and their duties;

(5) The voting requirements for action by the board, but, unless specifically provided otherwise, a majority of directors shall constitute a quorum and a majority of the quorum shall be necessary for any action taken by the board;

(6) The duties of the board which shall include the obligation to comply or to cause compliance with this section and the laws of the state and, in addition, with each and every term, provision and covenant in the joint contract creating the commission on its part to be kept or performed;

(7) The manner in which additional municipalities, public water supply districts, and sewer districts may become parties to the joint contract;

(8) The manner of financing the [district] **commission** and of establishing and maintaining a budget and annual audit for the [district] **commission**;

(9) The ownership interests of the contracting municipality electric cooperative associations, municipally owned or public utilities in a project or the manner of determining such ownership interest, which ownership interest shall be subject to any mortgage of a project pursuant to section 393.735;

(10) Provisions for the disposition, division or distribution of any property or assets of the commission on dissolution; and

(11) The term of the joint contract, which may be a definite period or until rescinded or terminated, and the method, if any, by which the joint contract may be rescinded or terminated so long as the commission has no bonds outstanding, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

3. A commission shall, if the joint contract so provides, be the successor to any nonprofit corporation, agency, or another entity theretofore organized by the contracting municipalities to provide the same function, service or facility, and the commission shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

393.715. 1. The general powers of a commission to the extent provided in section 393.710 **to be exercised for the benefit of its contracting members** shall include the power to:

(1) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects, either exclusively or jointly or by participation with electric cooperative associations, municipally owned or

public utilities or acquire any interest in or any rights to capacity of a project, within or outside the state, and act as an agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project;

(2) Acquire, sell, distribute and process fuels necessary to the production of electric power and energy; provided, however, the commission shall not have the power or authority to erect, own, use or maintain a transmission line which is parallel or generally parallel to another transmission line in place within a distance of two miles, which serves the same general area sought to be served by the commission unless the public service commission finds that it is not feasible to utilize the transmission line which is in place;

(3) Acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, wholesale distribution, and utilization of water and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization; provided, however, that a commission shall not sell or distribute water, at retail or wholesale, within the certificated area of a water corporation which is subject to the jurisdiction of the public service commission unless the sale or distribution of water is within the boundaries of a public water supply district or municipality which is a contracting municipality in the commission and the commission has obtained the approval of the public service commission prior to commencing such said sale or distribution of water;

(4) Acquire by purchase or lease, construct, install, and operate lagoons, pipelines, wells, pumping stations, sewage treatment plants and other facilities for the treatment and transportation of sewage and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization;

(5) Enter into operating, franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person;

(6) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission;

(7) Employ agents and employees;

(8) Contract with any person, within or outside the state, for the construction of any project or for any interest therein or any right to capacity thereof, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment of bonds, except to the extent and on such terms as its board of directors or **executive committee** shall determine. Any contract entered into pursuant to this subdivision shall contain a provision that the requirements of sections 290.210 to 290.340, RSMo, shall apply;

(9) Purchase, sell, exchange, transmit, treat, dispose or distribute water, sewage, gas, heat or electric power and energy, or any by-product resulting therefrom, within and outside

the state, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, treatment, disposal or transmission, on such terms and for such period of time as its board of directors **or its executive committee** shall determine. A commission may not sell or distribute water, gas, heat or power and energy, or sell sewage service at retail to ultimate customers outside the boundary limits of its contracting municipalities except pursuant to subsection 2 or 3 of this section;

(10) Acquire, own, hold, use, lease, as lessor or lessee, sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein;

(11) Exercise the powers of eminent domain for public use as provided in chapter 523, RSMo, except that the power of eminent domain shall not be exercised against any electric cooperative association, municipally owned or public utility;

(12) Incur debts, liabilities or obligations including the issuance of bonds pursuant to the authority granted in section 27 of article VI of the Missouri Constitution;

(13) Sue and be sued in its own name;

(14) Have and use a corporate seal;

(15) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the commission;

(16) Make, and from time to time, amend and repeal, bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the commission;

(17) Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the commission deems proper;

(18) Join organizations, membership in which is deemed by the board of directors **or its executive committee** to be beneficial to accomplishment of the commission's purposes;

(19) Exercise any other powers which are deemed necessary and convenient by the commission to effectuate the purposes of the commission; and

(20) Do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person.

2. When a municipality purchases a privately owned water utility and a commission is created pursuant to sections 393.700 to 393.770, the commission may continue to serve those locations previously receiving water from the private utility even though the location receives such service outside the geographical area of the municipalities forming the commission. New water service may be provided in such areas if the site to receive such

service is located within one-fourth of a mile from a site serviced by the privately owned water utility.

3. When a commission created by any of the contracting entities listed in subdivision (4) of section 393.705 becomes a successor to any nonprofit water corporation, nonprofit sewer corporation or other nonprofit agency or entity organized to provide water or sewer service, the commission may continue to serve, as well as provide new service to, those locations and areas previously receiving water or sewer service from such nonprofit entity, regardless of whether or not such location receives such service outside the geographical service area of the contracting entities forming such commission; provided that such locations and areas previously receiving water and sewer service from such nonprofit entity are not located within:

(1) Any county of the first classification with a population of more than six hundred thousand and less than nine hundred thousand;

(2) The boundaries of any sewer district established pursuant to article VI, section 30(a) of the Missouri Constitution; or

(3) The certificated area of a water or sewer corporation that is subject to the jurisdiction of the public service commission.

393.720. Any commission established by joint contract under sections 393.700 to 393.770 shall constitute a [political subdivision and] body public and corporate of the state, exercising public powers[, separate from the contracting municipalities] **for the benefit of its contracting members and in order to carry out the public purposes and the public functions of its contracting members.** It shall have the duties, privileges, immunities, rights, liabilities and disabilities of **its contracting members and as a public body politic and corporate but shall not have taxing power separate from that of its members,** nor shall it have the benefit of the doctrine of sovereign immunity.

393.725. 1. Bonds issued pursuant to sections 393.700 to 393.770 by a commission shall be payable, as to the principal and interest, solely from the net revenues derived [by the commission] from the operation of **any one or more of the [commission's project or] projects financed by the commission,** after providing for the costs of operation and maintenance of the [commission's] project or projects, or from any other funds made available to the commission from sources other than from proceeds of taxation.

2. Each bond issued pursuant to the provisions of sections 393.700 to 393.770 shall contain a statement that such bond is not an indebtedness of the state, or of any political subdivision thereof, other than the joint municipal utility commission, or of the contracting municipalities, the contracting public water supply districts or the contracting sewer districts, but shall be special obligations of the commission only and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof, or of the contracting municipalities, contracting public water supply districts or contracting sewer districts is

pledged to the payment of or the interest on such bonds. The bonds shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. Neither the members of the board of directors of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the lawful issuance thereof.

3. A commission, subject to the provisions of [section 393.760] **sections 393.700 to 393.770**, may from time to time issue its bonds in such principal amounts as it deems necessary to provide sufficient funds to purchase, construct, extend or improve a project, including the establishment or increase of reserves, interest accrued during construction of such project and for a period not exceeding one year after the completion of construction of such project, and the payment of all other costs or expenses of the commission incident to and necessary or convenient to carry out its corporate purposes and powers.

4. Bonds of a commission shall be authorized by resolution of the board of directors, **or by resolution of its executive committee if the board has delegated such authority**, and may be issued under such resolution or under a trust indenture or other security instrument, as authorized by the resolution, in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon, registered or both, carry such conversion or registration privileges, have such rank or priority, **be payable from any one or more projects**, be executed in such manner, be payable in such medium of payment, at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture or other security instrument may provide, and without limitation by the provisions of any other law limiting amounts, maturities or interest rates.

5. The bonds shall be sold at public sale or at private sale as the commission may provide and at such price or prices as the commission shall determine. The decision of the commission shall be conclusive.

6. The bonds may be signed by manual or facsimile signatures as determined by resolution [of the board]. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

7. Pending preparation of definitive bonds, a commission may issue temporary bonds which shall be exchanged for the definitive bonds when such bonds shall have been executed and are available for delivery.

8. All bonds issued under the provisions of sections 393.700 to 393.770 shall be negotiable instruments pursuant to the provisions of the uniform commercial code of the state.

393.730. 1. The resolution authorizing any issuance of bonds hereunder shall make provision for the payment of the bonds by fixing such rates, fees and charges for water, sewer, gas, heat, electric power and energy and all other services **provided by the project** sufficient to pay the interest and principal of the bonds when due, to provide for a sinking fund sufficient to retire the bonds, and to provide and maintain reasonable reserves. Such rates, fees and charges shall also be sufficient to pay the costs of operation, improvement and maintenance of the [water, sewer, gas, heat or electric power facilities] **project**.

2. The resolution and trust indenture under which any bonds shall be issued shall constitute a contract with the holders of the bonds, and may contain provisions, among others, as to:

(1) The terms and provisions of the bonds;

(2) As provided in section 393.735, the mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenues from any project or projects or any revenue-producing contract or contracts made by the commission with any person to secure the payment of bonds, subject to such agreements with the holders of bonds as may then exist;

(3) The custody, collection, securing, investment and payment of any revenues, assets, money, funds or property with respect to which the commission may have any rights or interest;

(4) The purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, [and] the pledge of such proceeds to secure the payment of the bonds **and the net revenues of the project or projects which may be pledged to the payment of the bonds**;

(5) Limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(6) The rank or priority of any bonds with respect to any lien or security;

(7) The creation of special funds or moneys to be held in trust or otherwise for operating expenses, payment, or redemption of bonds, reserves or other purposes, and the use and disposition of moneys held in such funds;

(8) The procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(9) The definition of the acts or omissions to act which shall constitute a default in the duties of the commission to holders of its bonds, and the rights and remedies of such holders in the event of such default including, if the commission shall so determine, the right to accelerate the due date of the bonds or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution and trust indenture;

(10) Any other or additional agreements with or for the benefit of the holders of bonds

or any covenants or restrictions necessary or desirable to safeguard the interests of such holders;

(11) The custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(12) The vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the commission may determine, or limiting or abrogating the rights of the holders of any bonds to appoint a trustee, or limiting the rights, powers, and duties of such trustee; and

(13) Appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

393.740. 1. All bonds issued pursuant to sections 393.700 to 393.770 and all income or interest thereon shall be exempt from all state taxes, except estate and transfer taxes.

2. All property, real and tangible personal, except for properties acquired exclusively for water supply districts, acquired by the bonds issued pursuant to sections 393.700 and 393.770 or otherwise acquired by a commission shall be subject to taxation for state, county, and municipal and other local purposes only to the same extent as if such property was owned directly by each **contracting or participating municipality in such proportion or manner as specified by contract among all contracting or participating municipalities party to a project or, if not so specified**, in proportion to the percentage of each **contracting or participating** municipality's interest or participation in the facility or property.

393.745. Any commission governed by the provisions of sections 393.700 to 393.770 having issued bonds under sections 393.700 to 393.770 may from time to time as authorized by resolution of the commission, **or by resolution of its executive committee if the board has delegated such authority**, issue refunding bonds for the purpose of refunding, extending and unifying the whole or any part of its valid outstanding indebtedness.

393.760. 1. [The commission] **Each participating municipality** shall, in accordance with the provisions of chapter 115, RSMo, order an election to be held whereby the qualified electors in [each contracting] **such participating** municipality [participating in the project] shall approve or disapprove [the] **its** issuance of the bonds [as provided for in the resolution of the commission] **to finance its individual interest in the project**. The [commission] **participating municipality** may not order such an election until it has [engaged and] received a report from an independent consulting engineer as defined in section 327.181, RSMo, for the purpose of determining the economic and engineering feasibility of any proposed project the costs of which are to be financed through the issuance of bonds. The report of the consulting engineer shall be provided to and approved by the legislative body and executive of each [contracting] **such participating** municipality [participating in the project] and such report shall be open to public inspection

and shall be the subject of a public hearing in each **participating** municipality [participating in the project]. Notice of the time and place of each such hearing shall be published in a daily newspaper of general circulation within each **such participating** municipality. Interested parties may appear and fully participate in such hearings.

2. [The commission] **Each participating municipality** shall notify the election authority or authorities responsible for conducting elections within [each contracting] **such participating** municipality [participating in the project] in accordance with chapter 115, RSMo.

3. The question shall be submitted in substantially the following form:

OFFICIAL BALLOT

[Should a resolution to approve the issuance of] **Shall (name of participating municipality) issue its (type) revenue bonds** [by the joint municipal (water) (sewer) (power) (gas) commission] in an amount not to exceed \$..... for the purpose of **paying its share of the cost of participating in (describe project)** be approved?

Yes No

If you are in favor of the resolution, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

4. If the [resolution to issue] **issuance of** the bonds is approved by at least a majority of the qualified electors voting thereon in [each of the contracting municipalities participating in the project] **the participating municipality**, the [commission] **participating municipality** shall declare the result of the election and cause the bonds to be issued.

5. [The municipalities participating in the project] **Each participating municipality** shall bear all expenses associated with the elections in such [contracting municipalities] **participating municipality**.

393.770. 1. The contracting municipalities may provide in the joint contract for payment to the commission of funds for commodities to be procured and services to be rendered by the commission. The contracting municipalities, **participating municipalities**, and other persons may enter into purchase agreements with the commission for the purchase, sale, exchange or transmission of water, sewage service, gas, heat or any right to capacity or interest in such electric power and energy **and any other services provided by the project** whereby the purchaser is obligated to make payments in amounts which shall be sufficient to enable the commission to meet its expenses, interest and principal payments, whether at maturity or upon sinking fund redemption, for its bonds, reasonable reserves for debt service, operation and maintenance and renewals and replacements and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security instrument. Purchase agreements may contain such other terms and conditions as the commission and the purchasers may determine,

including provisions whereby the purchaser is obligated to pay for water, sewage service, gas, heat [or], power, **or any other services provided by the project** irrespective of whether water, sewage service, gas, heat [or], energy, **or other service** is produced or delivered to the purchaser or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project. Such agreements may be for a term covering the life of a project or for any other term, or for an indefinite period. The joint contract or a purchase agreement may provide that if one or more of the purchasers default in the payment of its obligations under any such purchase agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the water, sewage service, gas, heat [or], energy, **or other service** to be purchased by the defaulting purchaser.

2. The obligations of a **contracting or participating** municipality under a purchase agreement with a commission or arising out of the default by any other purchaser with respect to such an agreement shall not be construed to constitute debt of the **contracting or participating** municipality. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the **contracting or participating** municipality, payable solely from the revenues and other moneys derived by the **contracting or participating** municipality from its municipal utility and shall be treated as expenses of operating a municipal utility.

Bill

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